

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 380

October 2011

REMINDER OF ORDER OF BUSINESS

October

- 10 Columbus Day - Legal Holiday (IC 1-1-9-1)
- 15 Last day to make pension report and payment for third quarter by counties participating in Public Employees' Retirement Fund.
- 20 Last day to report and make payment of State Income Tax withheld in September to Indiana Department of Revenue.
- 26, 27, 28 County Auditor's Fall Conference – Indianapolis, Indiana
- 31 Last day to file quarterly unemployment compensation report with the Indiana Department of Workforce Development.
- Last day to report and make payment of balance of Federal Income Tax withheld in the third quarter to Internal Revenue Service.

November

- 1 Last day for county auditor to certify to the division of state court administration the amount, if any, the county will be providing to supplement the judges salary during the ensuing calendar year. (IC 33-38-5-6(b))
- 8 Election Day – Legal Holiday. (IC 1-1-9-1)

Last date for County Board of Tax Adjustment [except Marion County and in a county containing a second class city (November 1)] to complete its duties. (IC 6-1.1-17-9(a))
- 10 Last day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections. (IC 6-1.1-37-10)
- 11 Veterans' Day - Legal Holiday. (IC 1-1-9-1)
- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 24 Thanksgiving Day - Legal Holiday. (IC 1-1-9-1)

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 2

October 2011

REMINDER OF ORDER OF BUSINESS
(Continued)

December

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)
- Last date for County Board of Tax Adjustment in Marion County and in a county containing a second class city to complete its duties. (IC 6-1.1-17-9(a))
- 20 Last day to report and make payment of State Income Tax withheld in November to Indiana Department of Revenue.
- 25 MERRY CHRISTMAS!! Legal Holiday. (IC 1-1-9-1)
- 31 Review year-end duties.
- Post and close all records completely and promptly.
- The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office, if field examiners or a successor Treasurer are not available to verify the cash count.

CONFLICT OF INTEREST SUBMISSION

Please submit all future conflict of interest forms electronically by e-mail. The individual submitting the request will receive a confirmation by e-mail. The e-mail address for submission is baanderson@sboa.in.gov. The e-mail subject line should read Conflict of Interest Form 2011, with changes to the date in future years as appropriate. If you wish to have a hardcopy confirmation, please provide a self-addressed stamped envelope with your request.

CONFLICT OF INTEREST

IC 35-44-1-3 states in part:

- “ (a) The following definitions apply throughout this section:
- (1) "Dependent" means any of the following:
 - (A) The spouse of a public servant
 - (B) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is:
 - (i) unemancipated; and
 - (ii) less than eighteen (18) years of age.
 - (C) An individual more than one-half (1/2) of whose support is provided during a year by the public servant.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 3

October 2011

CONFLICT OF INTEREST – (Continued)

(2) "Governmental entity served by the public servant" means the immediate governmental entity being served by a public servant.

(3) "Pecuniary interest" means an interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

(A) the public servant; or

(B) a dependent of the public servant who:

(i) is under the direct or indirect administrative control of the public servant; or

(ii) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.

(b) A public servant who knowingly or intentionally:

(1) has a pecuniary interest in; or

(2) derives a profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony

(c) It is not an offense under this section if:

(1) The public servant or the public servant's dependent receives compensation through salary or an employment contract for:

(A) services provided as a public servant; or

(B) expenses incurred by the public servant as provided by law.

(2) The public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.

(3) The contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government....

(6) A public servant who makes a disclosure that meets the requirements of subsection (d) or (e) and is:

(A) not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity, and functions and performs duties for the governmental entity unrelated to the contract or purchase;

(B) appointed by an elected public servant;

(C) employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent;

(D) elected; or

(E) a member of, or a person appointed by, the board of trustees of a state supported college or university....

(d) A disclosure must:

(1) be in writing;

(2) describe the contract or purchase to be made by the governmental entity;

(3) describe the pecuniary interest that the public servant has in the contract or purchase;

(4) be affirmed under penalty of perjury;

(5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase;

(6) be filed within fifteen (15) days after final action on the contract or purchase with:

(A) the state board of accounts; and

(B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 4

October 2011

CONFLICT OF INTEREST – (Continued)

(7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant.”

If any situations exist in your county which might be in conflict with this statute, we suggest you present your questions to the attorney who represents the county for written guidance. In view of the position of public responsibility in which county employees find themselves, any question of conflict of interest should be avoided.

PURCHASES

The Public Purchases Law, IC 5-22, governs the purchasing by local governmental units. Its major provisions are as follows. You should review IC 5-22 for the complete requirements and special purchasing options.

GENERAL PROVISIONS

Definitions

IC 5-22-2 contains definitions applicable to the public purchasing statutes. Selected definitions are presented in this section and throughout this chapter.

“Consolidated Purchase” means the purchase of multiple supplies or services from one (1) vendor. [IC 5-22-2-2.5]

“Policy” refers to a governmental body’s or purchasing agency’s written statement of purchasing procedure or substantive purchasing purposes that does not have the force and effect of law. [IC 5-22-2-21]

“Public Funds” means money derived from the revenue sources of the governmental body and deposited into the general or a special fund of the governmental body. [IC 5-22-2-23(a)]

“Purchase” includes buy, procure, rent, lease, or otherwise acquire. The term includes the following activities: discretion of requirements; solicitation or selection of sources; preparation and award of contract; all phases of contract administration; and all functions that pertain to purchasing. [IC 5-22-2-24]

“Purchasing Agency” means a governmental body that is authorized to enter into contracts by this article, rules adopted under this article, or by another law. [IC 5-22-2-25]

“Purchasing Agent” means an individual authorized by a purchasing agency to act as an agent for the purchasing agency in the administration of the duties of the purchasing agency. [IC 5-22-2-29]

“Rule” refers to an order, an ordinance, a resolution, or another procedure by which the governmental body is authorized by law to adopt a policy that has the force and effect of law. [IC 5-22-2-29]

“Supplies” means any property. The term includes equipment, goods and materials. The term does not include an interest in real property. [IC 5-22-2-38]

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 5

October 2011

PURCHASES - (Continued)

GENERAL PROVISIONS - (Continued)

Rules and Written Policies

A governmental body may adopt rules to regulate purchases of the governmental body which may supplement IC 5-22 and not be inconsistent with IC 5-22.

The purchasing agency of a governmental body may establish written policies for purchases made by the purchasing agency. The written policies may apply to all purchases generally or to a specific purchase as stated in the solicitation for the purchase. A written policy may supplement this article or a rule adopted by the purchasing agency's governmental body and not be inconsistent with this article or a rule adopted by the purchasing agency's governmental body. [IC 5-22-3-3]

COMPETITIVE BIDDING

A purchasing agency shall follow competitive bidding procedures described in IC 5-22-7 in awarding a contract for supplies, unless another purchasing method is required or authorized by IC 5-22. [IC 5-22-7-1]

Invitation for Bids

A purchasing agent shall issue an invitation for bids, as defined in IC 5-22-2-14. Pursuant to IC 5-22-7-2, an invitation for bids must include the following:

1. A purchase description. IC 5-22-2-27 defines a "Purchase Description" as the words used in a solicitation to describe the supplies or services to be purchased. The term includes specification attached to, or made a part of, the solicitation.
2. All contractual terms and conditions that apply to the purchase.
3. A statement of the evaluation criteria that will be used, including any of the following; inspection; testing; quality' workmanship; delivery; suitability for a particular purpose; and the requirement imposed under IC 5-22-3-5 regarding offers submitted by trusts.

Evaluation criteria that will affect the bid price and be considered in the evaluation for an award must be objectively measurable. [IC 5-22-7-3]

Only criteria specified in the invitation for bids may be used in bid evaluation. [IC 5-22-7-4]

4. The time and place for opening the bids.
5. A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with the rules or policies of the governmental body.
6. A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 6

October 2011

PURCHASES - (Continued)

COMPETITIVE BIDDING - (Continued)

Notice of Invitation for Bids

The purchasing agency shall give notice of the invitation for bids in a manner required by IC 5-3-1. The purchasing agency for a political subdivision may also provide electronic access to the notice through the computer gateway administered by the office of technology or any other electronic means available to the political subdivision. [IC 5-22-7-5]

Public Opening of Bids

The purchasing agency shall open bids publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. [IC 5-22-7-6]

Acceptance and Evaluation of Bids

Bids must be unconditionally accepted without alteration or correction, except as provided in IC 5-22-7-11 through IC 5-22-7-13 and evaluated based on the requirements provided in the invitation for bids. [IC 5-22-7-7]

Changes in Bid Prices. A purchasing agency may not permit changes in bid prices or other provisions of bids prejudicial to the interest of the governmental body or fair competition after bid opening. [IC 5-22-7-11]

Additional Terms or Items. If a bidder inserts contract terms or bids on items not specified in the invitation for bids, the purchasing agency shall treat the additional material as a proposal for addition to the contract and may do any of the following:

1. Declare the bidder nonresponsive.
2. Permit the bidder to withdraw the proposed additions to the contract in order to meet the requirements and criteria provided in the invitation for bids.
3. Accept any of the proposed additions to the contract, subject to IC 5-22-7-13. [IC 5-22-7-12]

Contract Additions. The purchasing agent may not accept proposed additions to the contract that are prejudicial to the interest of the governmental body or fair competition. [IC 5-22-7-13]

Invitation for Bid Requirements. A decision of the purchasing agent to permit a change to the requirements of the invitation for bids must be supported by a written determination by the purchasing agency. [IC 5-22-7-13]

Awarding of Contract

A contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder. [IC 5-22-7-8]

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 7

October 2011

PURCHASES - (Continued)

COMPETITIVE BIDDING - (Continued)

Erroneous Bid or Mistake

The governmental body may adopt rules or establish policies to allow any of the following:

1. Correction or withdrawal of inadvertently erroneous bids before or after award.
2. Cancellation of awards or contracts based on a mistake described in subdivision (1).

Except as provided in rule or policy, a purchasing agency must make a written decision to permit the correction or withdrawal of a bid or cancel awards or contracts based on bid mistakes. [IC 5-22-7-10]

Maintenance of Information by Purchasing Agency

The purchasing agency shall maintain the following information:

1. The name of each bidder
2. The amount of each bid.
3. Other information required by this article and rules adopted under this article.

This information is subject to the public inspection after each contract award. [IC 5-22-7-9]

SPECIFICATIONS

General Provisions

Economy. A specification must promote overall economy for the purposes intended and encourage competition in satisfying the governmental body's needs. [IC 5-22-5-3]

Rules and Policies. A governmental body may adopt rules or establish policies for the preparation, maintenance, and content of specifications. Rules or policies may include a description of requirements for inspecting, testing, or preparing an item for delivery. [IC 5-22-5-1]

Purchasing Agent Responsibility. A purchasing agent shall prepare, issue, revise, maintain, and monitor the use of specifications. [IC 5-22-5-2]

File of Specifications. The purchasing agency shall maintain an indexed file of specifications prepared by or under the authority of its purchasing agents. [IC 5-22-5-4]

Request for Specifications

A request for specifications may be issued if the purchasing agent makes a written determination that the development of specifications by the governmental body is not feasible and the executive of the governmental body approves the use of a request for specifications under IC 5-22-5-5. [IC 5-22-5-5]

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 8

October 2011

PURCHASES - (Continued)

SPECIFICATIONS - (Continued)

Request for Specifications - (Continued)

A request for specifications must include the following:

1. Factors or criteria that will be used in evaluating the specifications.
2. A statement concerning the relative importance of evaluation factors.
3. A statement concerning whether discussions may be conducted with persons proposing specifications to clarify the specification requirements. [IC 5-22-5-5]

Notice

The purchasing agent shall give notice of the request for specifications under IC 5-3-1. [IC 5-22-5-5]

Discussion and Revision of Specifications

As provided in the request for specifications, the purchasing agent may discuss proposed specifications with persons proposing specifications to clarify specification requirements. Persons proposing specifications must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposed specifications. [IC 5-22-5-5]

REQUEST FOR PROPOSALS

Subject to the policies of the purchasing agency, a purchasing agent may award a contract using the procedure provided by IC 5-22-9.

Rules and Policies

The governmental body may provide by rule or policy that it is either not practicable or not advantageous to the governmental body to purchase specified types of supplies by competitive sealed bidding and receiving proposals is the preferred method for purchase of that type of supply. [IC 5-22-9-8]

Content of Request for Proposals

The purchasing agent shall solicit proposals through a request for proposals, which must include the following:

1. The factors or criteria that will be used in evaluating the proposals.
2. A statement concerning the relative importance of price and the other evaluation factors.

PURCHASES - (Continued)

Content of Request for Proposals - (Continued)

3. A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with the rules of the governmental body.
4. A statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award. [IC 5-22-9-2]

The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals. [IC 5-22-9-10]

Notice

The purchasing agency shall give public notice of the request for proposals in the manner required by IC 5-3-1. The purchasing agency for a political subdivision may also provide electronic access to the notice through the electronic gateway administered by the office of technology. [IC 5-22-9-3]

Opening of Proposals

Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. [IC 5-22-9-4]

Discussion and Revision of Proposals

As provided in the request for proposals or under the rules or policies of the governmental body, discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. [IC 5-22-9-6]

Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. In conducting discussions with an offeror, information derived from proposals submitted by competing offerors may be used in discussion only if the identity of the offeror providing the information is not disclosed to others. The purchasing agency must provide equivalent information to all offerors with which the purchasing agency chooses to have discussions. [IC 5-22-9-9]

Award

Award shall be made to the responsible offeror whose proposals is determined in writing to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors set forth in the request for proposals. [IC 5-22-9-7]

If provided in the request for proposals, award may be made to more than one offeror whose proposals are determined in writing to be advantageous to the governmental body, taking into consideration price and other evaluation factors set forth in the request for proposals. [IC 5-22-9-7]

PURCHASES - (Continued)

REQUEST FOR PROPOSALS - (Continued)

Register of Proposals

A register of proposals must be prepared and open for public inspection after contract award. The register of proposals must contain the following:

1. A copy of the request proposals.
2. A list of all persons to whom copies of the request for proposals were given.
3. A list of all proposals received, which must include all the following:
 - a. The names and addresses of all offerors.
 - b. The dollar amount of each offer.
 - c. The name of the successful offeror and the dollar amount of that offeror's offer.
4. The basis on which the award was made.
5. The entire contents of the contract file except for proprietary information included with an offer, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the request for proposals. [IC 5-22-9-5]

SMALL PURCHASES

General Provisions

The small purchase chapter, IC 5-22-8, applies only to a purchase expected by the purchasing agent to be less than \$150,000. [IC 5-22-8-1]

Purchase requirements may not be artificially divided so as to constitute a small purchase under IC 5-22-8. [IC 5-22-8-1]

Quotes

Solicitation of Quotes. If the purchasing agent expects the purchase to be at least \$50,000 and not more than \$150,000, the purchasing agent may purchase supplies by inviting quotes from at least three persons known to deal in the lines or classes of supplies to be purchased. [IC 5-22-8-3]

The purchasing agent shall mail an invitation to quote to these persons at least seven days before the time fixed for receiving quotes. [IC 5-22-8-3]

Award of Contract. If the purchasing agent receives a satisfactory quote, the purchasing agent shall award a contract to the lowest responsible and responsive offeror for each line or class of supplies required. [IC 5-22-8-3]

PURCHASES - (Continued)

Small Purchase Policies

If the purchasing agent expects the purchase to be less than \$50,000, the purchasing agent may make a purchase under small purchase policies established by the purchasing agency or under rules adopted by the governmental body. [IC 5-22-8-2]

OFFICIAL BONDS

Indiana Code 5-4-1-18 provides that the following county and township officers and employees shall file individual surety bonds:

1. Auditors, treasurers, recorders, surveyors, sheriffs, coroners, assessors and clerks.
2. Township trustees and assessors
3. Those employees directed to file an individual bond by the fiscal body of the county.

The fiscal body of the county or township may, by ordinance, authorize the purchase of a blanket bond or a crime insurance policy endorsed to include faithful performance to cover the faithful performance of all employees, commission members, and persons acting on behalf of the county or township including those listed above.

The fiscal body of the respective units shall fix the amount of the bond of the county treasurers, sheriffs, circuit court clerks, township trustees and conservancy district financial clerks as follows:

1. The amount should equal thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond provided.
2. The amount of the bond may not be less than thirty thousand dollars (\$30,000) nor more than three hundred thousand dollars (\$300,000) unless the fiscal body approves a greater amount for the officer or employee.

The county council shall fix the amount of the county auditor's bond at not less than thirty thousand dollars (\$30,000).

The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than fifteen thousand dollars (\$15,000).

IC 5-4-1-8 provides that official bonds of officers if sufficient shall be approved as follows:

1. Sheriff, coroner, recorder, auditor, treasurer, and clerk of the circuit court, by the county executive.
2. County assessor, township trustee, and township assessor, by the county auditor.
3. Other county officers required to give bonds, by the clerk of the circuit court unless otherwise specified.

A person who approves an official bond shall write the approval on the bond. A bond must be approved before it is filed. [IC 5-4-1-8]

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 12

October 2011

HOME RULE

All counties have home rule powers as set out in IC 36-1-3. The following should be considered when exercising such powers.

It is desirable to look at the limitations, both expressed and implied, that have been placed on the scope of Home Rule powers. As noted in prior bulletins, Home Rule was never intended to give local governments a completely free hand to do whatever they want, and there are definite rules and limits that must be observed.

Expressed Limits of Home Rule

The Home Rule law contains a number of expressed provisions that preclude, limit, or condition the exercise of powers under Home Rule.

First, there are two general limits. A unit may not do anything that is:

(1) expressly denied by the state constitution or state law (for example, a unit could not prescribe a penalty for an action that violates state law or impose jail time as a penalty for violation of a local ordinance); or

(2) expressly granted to another entity (counties, for instance could not take over functions or usurp powers vested by law in municipalities, township, etc.

In addition, there are other powers of a more specific character that units still may not exercise in the absence of authorization by state law. These include:

(1) the power to condition or limit its civil liability, except as expressly granted by statute;

(2) the power to prescribe the law governing civil actions between private persons;

(3) the power to impose duties on another political subdivision, except as expressly granted by statute;

(4) the power to impose a tax, except as expressly granted by statute;

(5) the power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power;

(6) the power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services;

(7) the power to regulate conduct that is regulated by a state agency, except as expressly granted by statute;

(8) the power to prescribe a penalty for conduct constituting a crime or infraction under statute;

(9) the power to prescribe a penalty of imprisonment for an ordinance violation;

(10) the power to prescribe a penalty of a fine as follows:

HOME RULE – (Continued)

Expressed Limits of Home Rule – (Continued)

(A) more than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program under IC 13-17-12-6;

(B) for a violation of any other ordinance:

(i) more than two thousand five hundred dollars (\$2,500) for a first violation of the ordinance; and

(ii) except as provided in subsection (c), more than seven thousand five hundred dollars (\$7,500) for a second or subsequent violation of the ordinance. (Does not apply to the violation of an ordinance that regulates traffic or parking)

(11) the power to invest money, except as expressly granted by statute;

(12) the power to order or conduct an election, except as expressly granted by statute.

Implicit Limitations of Home Rules

In addition to those limitations that are expressed in the Home Rule law, there are also a number of important considerations that will further limit the scope and applicability of Home Rule powers. These limits are not made explicit in the Home Rule law, but may be applied from examining other statutes and principles of law. These implied limitations include:

(1) a governmental unit may not exercise powers outside its normal territorial jurisdiction, except as specifically authorized by law or through interlocal agreement; and

(2) restrictions inherent in the federal laws, regulations, and constitution must be observed.

Procedures for Utilizing Home Rule

The ability to use Home Rule properly is not only important in terms of allowing government flexibility as needed, but is even more important now that many of the state laws which previously provided permissive powers to local units have been repealed. This is especially true of those laws which constituted “class” legislation in the past. Therefore, aside from providing additional powers, local units will need to invoke Home Rule authority in passing local ordinances to continue powers or procedures formerly granted by specific state statutes.

Who Can Utilize Home Rule Powers?

The home rule laws confer these powers to counties, cities, towns, schools, and townships. Libraries have never been accorded home rule powers, nor have special entities such as special service corporations or regional commissions.

HOME RULE – (Continued)

When Should Home Rule Powers Be Used?

A unit may exercise its Home Rule powers whenever it is “necessary or desirable” to exercise any power, perform any function, provide any service -- and create the structural elements or procedures to do so-- and;

(1) the laws and constitutions of the state and federal governments do not expressly or implicitly prohibit or preempt it from doing so; and

(2) state law does not already provide for exercising the power, providing the service, or performing the function, or state law does provide for the foregoing but does not mandate any procedures to follow in implementing it.

How Are The Home Rule Powers Exercised?

A question that one often hears when talking about Home Rule is, “Well that all sounds very nice - but how do we adopt Home Rule?” The answer to this question is very simple - you don’t adopt Home Rule. Home Rule represents both a policy of the state and a particular method more efficiently conveying powers to local governments. Home Rule is not like a “local option tax” that requires further action to become effective within a particular local jurisdiction.

Home Rule has already been conferred upon local units by the General Assembly as a matter of state law. No further action is necessary on the unit’s part in this respect.

Local action is required only when a unit wants to do some particular things under Home Rule authority. A unit doesn’t “adopt Home Rule” but it does adopt specific powers that it wants to exercise. The formal ordinance procedure is required to accomplish this end.

An error to which Home Rule has been subject in the past is the impression that it confers powers on local officials and bodies individually. Occasionally individual officials wanting to preform some function and seeing no state law prohibiting them from doing so have acted with the idea that “if anybody gripes, I’ll say its Home Rule”. Home Rule does not work that way. Home rule is essentially a legislative power -- a form of limited legislative discretion delegated by the state legislature to the appropriate local legislative bodies.

In essence, local ordinances substitute for state laws in the exercise of Home Rule powers. The bodies that must pass the appropriate authorizing ordinances are:

- (1) in a municipality, by the legislative body of the municipality;
- (2) in a county subject to IC 36-2-3.5 or IC 36-3-1, by the legislative body of the county.
- (3) in any other county, by the executive of the county.

The ordinance authorizing the exercise of a new power, the performance of a new function, or the provisions of a new service under the authority of the Home Rule law should be adopted according to the same rules and procedures generally applicable to the adoption of ordinances by the local legislative body. Although it is not a specific requirement, it would probably be advisable to state in the preamble or digest of the ordinance (not in the body of the ordinance itself) that Home Rule powers vested in the unit’s government by IC 36-1-3 are being exercised so that the source of authority will be clear in the event that the action is questioned.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 15

October 2011

INFRACTION JUDGEMENT FUND

IC 34-28-5-5 provides that judgment for violations of statutes defining infractions be deposited in the state general fund.

The Auditor should establish an Infraction Judgment Fund to quietus such judgments into when remitted by the courts. The balance in this fund will be paid and reported to the state twice a year with the Settlement Sheet.

Please do not commingle Infraction Judgment Fees with State Fines and Forfeitures.

DEFERRAL PROGRAM

The prosecuting attorney or the attorney for a municipal corporation may establish a deferral program for deferring infraction and ordinance violation cases actions brought under IC 34-28-5-1. Actions may be deferred if:

- (1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation;
- (2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee and monthly user's fee set by the prosecuting attorney or the attorney for the municipal corporation in accordance with IC 33-37-4-2(e);
- (3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation;
- (4) the defendant in the action agrees to pay a fee of seventy dollars (\$70) to the clerk of the court if the action involves a moving traffic offense (as defined in IC 9-13-2-110);
- (5) the agreement is filed in the court in which the action is brought; and
- (6) if the deferral program is offered by the prosecuting attorney, the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format⁶ designated by the prosecuting attorneys council.

When a defendant complies with the terms of an agreement filed, the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action the court shall dismiss the action. An action dismissed may not be re-filed.

Per information provided by State Court Administration about deferral programs, the defendant initially must pay as part of the program:

- (1) a document storage fee of two dollars (\$2);
- (2) a highway work zone fee of fifty cents (\$0.50) or twenty five dollars and fifty cents (\$25.50) depending on the offense;
- (3) an automated record keeping fee of five dollars (\$5); and

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 16

October 2011

DEFERRAL PROGRAM – (Continued)

(4) court costs of seventy dollars (\$70) if the infraction was a moving violation as defined in IC 9-13-2-110.

As part of the deferral agreement, the defendant may be required to pay an initial user fee, not exceeding \$52, and monthly user fees, not exceeding \$10, for each month the defendant is in the deferral program.

If the defendant fails to complete the deferral program the State will resume prosecution of the infraction. Initial and monthly fees paid for the deferral program are lost. Most deferral agreements incorporate this requirement by stating "failure to comply with each and every requirement of this agreement will result in the forfeiture of all fees paid into the program." The agreement used by your county's prosecuting attorney should be reviewed for this or similar language. Additionally, the defendant will be assessed all fees/costs that he or she has not already paid. Costs and fees cannot be charged again because prosecution of the infraction is being resumed. The county is not starting a new prosecution of a new infraction violation.

Therefore, the remaining costs and fees to be charged are as follows:

(1) infraction / ordinance violation costs of seventy dollars (\$70), if they were not already collected;

(2) law enforcement continuing education fee of four dollars (\$4);

(3) jury fee of two dollars (\$2);

(4) public defense administration fee of five dollars (\$5);

(5) judicial insurance adjustment fee of one dollar (\$1);

(6) judicial salaries fee of nineteen dollars (\$19);

(7) DNA sample processing fee of two dollars (\$2);

(8) court administration fee of five dollars (\$5);

(9) alcohol and drug services fee and alcohol and drug countermeasures fee if ordered by the court for the type of infraction; and

(10) any judgment ordered by the court for the violation of the infraction.

LOCAL ROAD AND STREET ACCOUNT-APPROVED USES OF DISTRIBUTIONS BY CITIES, TOWNS, AND COUNTIES

IC 8-14-2-5 states: "Money from the local road and street account shall be used exclusively by cities, towns, and counties for:

1. engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems;

2. the payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects;

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 17

October 2011

**LOCAL ROAD AND STREET ACCOUNT-APPROVED USES OF DISTRIBUTIONS BY CITIES, TOWNS,
AND COUNTIES – (Continued)**

3. any local costs required to undertake a recreational or reservoir road project under IC 8-23-5; or
4. the purchase, rental or repair of highway equipment.”

It is State Board of Accounts' position that local road and street account distributions are to be used only for direct expenses incurred in the construction, reconstruction, or maintenance of arterial and local roads and streets. This would prohibit the use of such funds for building buildings or for such indirect costs as administrative salaries or supplies, goods, or materials not used directly for one of the aforementioned purposes.

Local road and street account distributions must be budgeted and appropriated prior to expenditure in the same manner as properly tax revenues.

COURTS - LATE PAYMENT FEES

IC 33-37-5-22 states: “(a) Except as provided in subsection (e), this section applies to an action if all the following apply:

- (1) The defendant is found, in a court that has a local court rule imposing a late payment fee under this section, to have:
 - (A) committed a crime;
 - (B) violated a statute defining an infraction;
 - (C) violated an ordinance of a municipal corporation; or
 - (D) committed a delinquent act.
- (2) The defendant is required to pay:
 - (A) court costs, including fees;
 - (B) a fine; or
 - (C) a civil penalty.
- (3) The defendant is not determined by the court imposing the court costs, fine, or civil penalty to be indigent.
- (4) The defendant fails to pay to the clerk the costs, fine, or civil penalty in full before the later of the following:
 - (A) The end of the business day on which the court enters the conviction or judgment.
 - (B) The end of the period specified in a payment schedule set for the payment of court costs, fines, and civil penalties under rules adopted for the operation of the court.

COURTS - LATE PAYMENT FEES – (Continued)

(b) A court may adopt a local rule to impose a late payment fee under this section on defendants described in subsection (a).

(c) Subject to subsection (d), the clerk of a court that adopts a local rule imposing a late payment fee under this section shall collect a late payment fee of twenty-five dollars (\$25) from a defendant described in subsection (a).

(d) Notwithstanding IC 33-37-2-2, a court may suspend a late payment fee if the court finds that the defendant has demonstrated good cause for failure to make a timely payment of court costs, a fine, or a civil penalty.

(e) A plaintiff or defendant in an action under IC 33-34 shall pay a late fee of twenty-five dollars (\$25) if the plaintiff or defendant:

- (1) is required to pay court fees or costs under IC 33-34-8-1;
- (2) is not determined by the court imposing the court costs to be indigent; and
- (3) fails to pay the costs in full before the later of the following:
 - (A) The end of the business day on which the court enters the judgment.
 - (B) The end of the period specified in a payment schedule set for the payment of court costs under rules adopted for the operation of the court.

A court may suspend a late payment fee if the court finds that the plaintiff or defendant has demonstrated good cause for failure to make timely payment of the fee.”

IC 33-37-7-2(e) states: “The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

- (1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk’s record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.
- (2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.”

CUMULATIVE CAPITAL IMPROVEMENT FUND

IC 36-9-16-3 states: “A unit may establish cumulative capital improvement funds to provide money for one (1) or more of the following purposes:

- (1) To acquire land or rights-of-way to be used for public ways or sidewalks.
- (2) To construct and maintain public ways or sidewalks.
- (3) To acquire land or rights-of-way for the construction of sanitary or storm sewers, or both.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 19

October 2011

CUMULATIVE CAPITAL IMPROVEMENT FUND – (Continued)

- (4) To construct and maintain sanitary or storm sewers, or both.
- (5) To acquire, by purchase or lease, or to pay all or part of the purchase price of a utility.
- (6) To purchase or lease land, buildings, or rights-of-way for the use of any utility that is acquired or operated by the unit.
- (7) To purchase or acquire land, with or without buildings, for park or recreation purposes.
- (8) To purchase, lease, or pay all or part of the purchase price of motor vehicles for the use of the police or fire department, or both, including ambulances and firefighting vehicles with the necessary equipment, ladders, and hoses.
- (9) To retire in whole or in part any general obligation bonds of the unit that were issued for the purpose of acquiring or constructing improvements or properties that would qualify for the use of cumulative capital improvement funds.
- (10) To purchase or lease equipment and other nonconsumable personal property needed by the unit for any public transportation use.
- (11) In a county or a consolidated city, to purchase or lease equipment to be used to illuminate a public way or sidewalk.
- (12) The fund may be used for any of the following purposes:
 - (A) To purchase, lease, upgrade, maintain, or repair one (1) or more of the following:
 - (i) Computer hardware.
 - (ii) Computer software.
 - (iii) Wiring and computer networks.
 - (iv) Communication access systems used to connect with computer networks or electronic gateways.
 - (B) To pay for the services of full-time or part-time computer maintenance employees.
 - (C) To conduct nonrecurring inservice technology training of unit employees.

CUMULATIVE CAPITAL IMPROVEMENT FUND – (Continued)

(13) To purchase body armor (as defined in IC 35-47-5-13(a)) for active members of a police department under:

(A) IC 36-5-7-7;

(B) IC 36-8-4-4.5;

(C) IC 36-8-9-9; and

(D) IC 36-8-10-4.5.”

RAINY DAY FUND

A county may establish a rainy day fund to receive transfers of unused and unencumbered funds under IC 36-1-8-5.

IC 36-1-8-5(b) states in part: “Whenever the purposes of a tax levy have been fulfilled and an unused and unencumbered balance remains in the fund, the fiscal body of the political subdivision shall order the balance of that fund to be transferred as follows, unless a statute provides that it be transferred otherwise:

(1) Funds of a county, to the general fund or rainy day fund as provided in section 5.1 of this chapter...”

IC 36-1-8-5.1 states: “(a) A political subdivision may establish a rainy day fund by the adoption of:

(1) an ordinance, in the case of a county, city, or town; or

(2) a resolution, in the case of any other political subdivision.

(b) An ordinance or a resolution adopted under this section must specify the following:

(1) The purposes of the rainy day fund.

(2) The sources of funding for the rainy day fund, which may include the following:

(A) Unused and unencumbered funds under:

(i) section 5 of this chapter;

(ii) IC 6-3.5-1.1-21.1;

RAINY DAY FUND – (Continued)

(iii) IC 6-3.5-6-17.3; or

(iv) IC 6-3.5-7-17.3.

(B) Any other funding source:

(i) specified in the ordinance or resolution adopted under this section; and

(ii) not otherwise prohibited by law.

(c) The rainy day fund is subject to the same appropriation process as other funds that receive tax money.

(d) In any fiscal year, a political subdivision may transfer under section 5 of this chapter not more than ten percent (10%) of the political subdivision's total annual budget for that fiscal year, adopted under IC 6-1.1-17, to the rainy day fund.

(e) A political subdivision may use only the funding sources specified in subsection (b)(2)(A) or in the ordinance or resolution establishing the rainy day fund. The political subdivision may adopt a subsequent ordinance or resolution authorizing the use of another funding source.

(f) The department of local government finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.

(g) A county, city, or town may at any time, by ordinance or resolution, transfer to:

(1) its general fund; or

(2) any other appropriated funds of the county, city, or town;
money that has been deposited in the rainy day fund of the county, city, or town.

DESTRUCTION OF CANCELED BONDS AND COUPONS

A bank serves as trustee for municipal bond issues. They requested our audit position regarding providing issuers with a written detailed disposal document instead of returning the canceled bonds and coupons. The following is our response to their question.

Statutory authorization and procedures to be followed in the destruction of public records may be found at Indiana Code 5-15-6. In reviewing this statute, we find no authorization for use of cremation certificates.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 22

October 2011

DESTRUCTION OF CANCELED BONDS AND COUPONS – (Continued)

With the increased use of registered bonds we have taken the following audit position. Assuming there is no requirement in the bond ordinance that canceled bonds and coupons must be returned to the issuing agency, the State Board of Accounts will not take audit exception if the following conditions are followed. The Trustee provides a properly executed cremation certificate to the issuer clearly listing the individual bonds and coupons destroyed, the date of destruction, and a provision indemnifying the issuer if the listed bonds and coupons are ever presented a second time for redemption.

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE

Question #1: Are there changes coming or current laws that require the county to report cell phone and mileage on W2's for the county employees? Are there exceptions for public safety?

Answer #1: Reporting requirements and exceptions for fringe benefits may be found through IRS publication 15b or you can contact the IRS directly for specific situations. Raelane Hoff is the IRS contact for local governments in Indiana. But remember there is only one of her for the whole state. Her email address is Raelane.Hoff@IRS.gov.

Question #2: Auditor's office charges \$5 to endorse/transfer a deed but not to endorse an affidavit. Will a \$5 fee be charged to endorse Transfer on Death Affidavits since we do not endorse the Transfer on Death deeds?

Answer #2: Yes, IC 32-17-14-26(b)(20) specifies that it is the affidavit that must be endorsed by the county auditor in order to be recorded.

Question #3: When abatement is given to a city property, does the county get any of the Economic Development fee? So far the City gets it all and the county must "account" for the abatement for 10 years with no compensation? Is that fair?

Answer #3: If the designating body and entity applying for the deduction agree to an economic development fee under IC 6-1.1-12.1-14, the fees collected must be distributed to one (1) or more public or nonprofit entities established to promote economic development within the corporate limits of the city, town, or county served by the designating body. The designating body shall notify the county auditor of the entities that are to receive distributions under this section and the relative proportions of those distributions. The county auditor shall distribute fees collected under this section in accordance with the designating body's instructions.

Question #4: Under the new legislation how is the sheriff's pay going to be calculated?

Answer #4: We assume you are asking about IC 36-2-13-17 for a sheriff who is elected or reelected to office after Nov 1, 2010. In regard to the maximum compensation the sheriff can receive either through the contract method or other form of annual compensation to determine the maximum amount the fiscal body determines the sum of the annual salary that would be paid to the full-time prosecuting attorney by the state in your county plus any additional paid by the county.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 23

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

Question #5: Can you explain the process for increasing 911 landline and wireless rates?

Answer #5: For wireless telephone charges under IC 36-8-16.5, the State's wireless enhanced 911 advisory board determines fees per statutory guidelines. This includes the amount needed for the board to make distributions to PSAPS and costs incurred by providers. The board is limited to increases of not more than 7 cents a year and the fee may not exceed \$1 per month per phone. The landline emergency telephone service fee is established by local ordinance. The fee must be sufficient to pay the cost of the installation and operation of the 911 telephone system. IC 36-8-16-6 gives criteria of how to calculate monthly average of access line charges that the fee cannot exceed. So under IC 36-8-16-7 the fiscal body may adopt an ordinance to change the fee but must comply with the statute and not do so more than once a year.

Question #6: Improving Communication Procedures – Since this is a SBOA called meeting there should be a note on the SBOA website and the Indiana Auditors Association website reminding Auditor's (especially new ones) to print handouts from the appropriate contributing Agency. That would prevent the Auditor from being unprepared at conference and is better communication procedures. Assumptions should not be made that Auditor's (office holders) will figure it out. Help us!

Answer #6: We appreciate the feedback and ideas. We will work toward better communication and coordination. Please help us by remembering to let us know of any e-mail address changes as this is now our main means of communication with you so that you will receive information from our office. Also, we post materials for the conference that have been made available to us the Wednesday of the week before the conference.

Question #7: If the SBOA says we are out of balance in things such as the withholdings account, and have been some time, how can we get this back in balance for several years past. This is my first term and I really don't have time to go back several years to when the SBOA says the last time we were in balance. Can we hire an accountant to get this back in balance? Why would the past Auditor not have been written up for this and been made to correct this?

Answer #7: Items that have been out of balance for some time can be difficult to resolve. When you take on an office you've taken on unresolved issues. It is important to make sure to isolate the difference. If the difference is still changing then that indicates a processing issue that still exists and needs to be resolved. If the difference is consistent then research of past county records could provide support for correction of bookkeeping errors and omissions. You can hire an accountant but as this is a service contract you will need to get the Board of County Commissioners approval. SBOA doesn't audit one hundred percent; the elected official retains fiduciary responsibility for their office regardless of whether or not State Board of Accounts has issued a finding.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 24

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

Question #8: Our school corporation gave the Auditor's office a letter at the first of the year with a list of dates for advance draws they were requesting. They have asked for an advance draw on May 16th and May 25th. Do we have to honor the second advance draw request, just 10 days apart?

Answer #8: IC 5-13-6-3(b) every county treasurer who is the collector of any taxes for any political subdivision...not later than 30 days after receipt of a written request for funds filed with the treasurer by a proper officer of any political subdivision within the county, advance to that political subdivision a portion of the taxes collected before the semiannual distribution. The amount advanced may not exceed the lesser of:

- (1) 95% of the total amount collected at the time of the advance or
- (2) 95% of the amount to be distributed at the semiannual distribution

(c) Upon notice from the county treasurer of the amount advanced the county auditor shall draw a warrant upon the county treasurer for the amount. The amount of the advance must be available immediately for the use of the political subdivision. There is no mention of the number of times this request may be made. You might want to talk with the political subdivision about a more efficient way to meet both of your needs.

Question #9: On personal property, a mobile home has delinquent taxes due, a new owner becomes the title holder, do taxes stay with the mobile home or are they the previous title holder's responsibility?

Answer #9: Per IC 6-1.1-7-7(a), The owner of a mobile home on the assessment date of a year is liable for the taxes imposed upon the mobile home for that year.

IC 6-1-1-7-10(c) states the county treasurer shall issue a permit which is required to either move or transfer the title to a mobile home if the taxes due on the mobile home have been paid.

Per IC 6-1.1-7-10.4, the owner of a mobile home who sells the mobile home to another person shall provide the purchaser with the permit required by section 10(b) before the sale is consummated.

Finally, IC 6-1.1-7-9 says in part: For late payments..."In addition, the mobile home and the personal property of a delinquent tax payer shall be levied upon and sold in the same manner that a taxpayer's personal property is levied upon an sold under IC 6-1.1-23.

Question #10: Do we have to do advance draws to units? And does it have to be property tax and excise or just property tax?

Answer #10: Per IC 5-13-6-3, you must advance not later than 30 days after receipt of a written request an amount based on total collections for each taxing district not to exceed 95% of collections or 95% of total to be settled whichever is less.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 25

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

- Question #11:** To make sure I understand the Annual Report filing before budget is approved, do I need to have my 2011 CAR filed with the SBOA before my 2012 budget is approved? I normally get the annual report in at middle of February, to start abstract/tax bill process. I need to make sure I'm getting my timelines covered, especially since we will be having the new chart of accounts conversion.
- Answer #11:** The 2010 County Annual Report (CAR) due March 1, 2011 must be filed before approval of the 2012 budget. This applies to all units not just counties.
- Question #12:** Our council wants to know if we can use Drainage Maintenance fund to pay part of the Surveyor's wages. He would figure what percent of his time is spent on a particular ditch and county general fund would be reimbursed for drain maintenance foe his time.
- Answer #12:** No. Per IC 36-9-27-11, compensation of the surveyor and other operating expenses of the drainage board are payable from the county general fund.
- Question #13:** Are we required by any Indiana law or code to have a tax sale every year?
- Answer #13:** Our audit position given the language in IC 6-1.1-24-1 is technically, No. IC 6-1.1-24-1 requires a list of delinquencies on or after January 1 of each calendar year in which a tax sale will be held in a county...You also could have a situation where the court does not order a sale after the list is certified. However a county treasurer's duty is to collect taxes. Treasurers must be diligent in performing this duty.
- Question #14:** Can a County elect not to pay judges and prosecutors supplemental? Code says "may" but county attorney said we cannot take away from judges if already paying unless all county employees get pay reduction. A longtime commissioner and former longtime council member say we can and does not agree with attorney.
- Answer #14:** We have found no Indiana Code that prohibits the reduction of compensation or rescinding of judges and prosecutors supplement compensation, as long as, changes are made to elected officials compensation only as allowed by IC 36-2-5-13. However, this should not be construed to be a legal opinion. It is the position we would take during an audit of the county. Legal guidance should be sought from and provided by the county attorney.
- Question #15:** Can we require the Health Department to reimburse County General for the employees who are covered under our group health insurance? Does the same apply for PERF and social security?
- Answer #15:** It would not be appropriate for the department to reimburse County General. However, if the health department has appropriations to pay for personal services from a f und other than County General that appropriation could be used to directly pay for department employee's health insurance, PERF, and social security taxes, if deemed appropriate by your county.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 26

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

- Question #16:** Do you have to separate the current reassessment fund with the 2012 reassessment fund? Meaning all revenue this year i.e. FIT, CVET, Property Taxes and Miscellaneous revenue, should go in separate new fund?
- Answer #16:** IC 6-1.1-4-27.5 establishes a reassessment fund with its own levy for the current general assessment (7/1/9-3/1/12) using property taxes due in 2006-2009. Monies raised by the reassessment levy on property taxes due in 2010-2014 must be deposited into a separate reassessment fund for the general reassessment beginning 7/1/14.
- Question #17:** Our sheriff wants to charge a fee for fingerprinting and put that money in the firearms training fund, can we do that?
- Answer #17:** IC 35-47-2-3 – No, only gun permit fees are to be deposited into this fund. Fingerprints are required as part of the handgun permit application process. There is a fee for the permit application by statute. Additional fees cannot be added by the county for this same service.
- Question #18:** Are we required to do an ordinance to set up new funds?
- Answer #18:** Only if required by state statute to have an ordinance or the fund is being established without statutory authority by Home Rule (IC 36-1-3).
- Question #19:** Tammy White said the Treasurers should not make (post) corrections. How should penalties be removed?
- Answer #19:** County Auditor's may post C of E's. This duty must be segregated from the collection duties the County Treasurer is responsible for in order to have adequate segregation of duties and adequate internal controls. It is part of the checks and balances the county organizational structure provides.
- Question #20:** Congressional Principal Fund – What is the procedure to close this out to the state?
- Answer #20:** IC 20-42-2-4.5 describes the process. To summarize the county does the following: 1. Resolution of Council. 2. Auditor prepares a report within 10 days to Commissioners. 3. County Commissioners order Auditor to remit cash and report to state. Please contact Vicki Pool at the Treasurer of State's Office while working through this process.
- Question #21:** For those offices who by statute: "shall" have a first deputy, 1. Do they actually have to have a first deputy? 2. Can it be a part-time position? 3. Can two offices share a first deputy?
- Answer #21:** Per IC 36-2-16-4, the Auditor, Treasurer, Recorder, Sheriff and Superintendent of schools are entitled to appoint one first or chief deputy. This IC does not specifically require these officials to appoint a first or chief deputy nor does it give guidance whether they are full-time or part-time.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 27

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

Question #22: Are penalties on the other assessments distributed to the taxing district or the other assessment it was collected for/on during settlement? If they go to the district, where do I put the penalties throughout settlement so the 49TC balances with section A? (our county will be taking out refunds in Spring)

Answer #22: Late payment penalties for everything that is on the tax duplicate should be distributed through settlement via the tax rates. Please review and follow the settlement instructions published by the Auditor of State's Office for the details.

Question #23: If the county pays a vendor, mails the check out, the check gets stolen from his mailbox – gets altered and the bank cashes it, who is responsible for this? We re-issued a check to the vendor, the forger is in jail but the bank says it is not their problem to refund that money to the county. We did not report this to the SBA, sorry we are new, should we have? Do we just wait for the forger to make restitution?

Answer #23: The court has made some determination of the responsible party when they ordered the restitution to an injured party. This is appropriate because your question is a legal question. The court order should provide guidance on any restitution to be paid by convicted person in jail and to whom it will be paid when collected by the court. We wonder if the court required reissuance of check. Because we do not know why the county would have taken that action on it's own. At this point continue to work with the County Attorney. When new law goes into effect, July 1, 2011, you should only report to SBOA if there was a theft of county money or property. In this case where the check was altered there appears to be a theft of the vendor's money. There may have been a theft of both the vendor's money and county money if the amount of the check was altered. The county does now have damages because they paid the vendor twice.

Question #24: Per Diems – Do we have to turn in receipts and only get paid for the amount spent or do we get to flat dollar amount no matter how much money was spent? Also what about tips and alcoholic beverages, are they reimbursable? What is the limit on per diems is this set by the county or the state?

Answer #24: For guidance on paying per diems you need to review the authority for the reimbursement. Depending on the situation, it could be per state statute or county policy. Sometimes the law and policy will require receipts and other times they do not. Tips are not provided for reimbursement in state called meeting statutes or statutes on per diems for service on boards. County policy may provide reimbursement for tips if specified in written policy. Reimbursement for alcoholic beverages is not allowed from public funds if actual receipts for purchase are being reimbursed per the uniform compliance guidelines. Once again, review the authority for reimbursing or paying a per diem and follow that state statute or county policy.

Question #25: Can an Auditor take a "copy" of a deed and transfer it or does it need to be the original?

Answer #25: Even though IC 36-2-9-18 on the Auditor's endorsement doesn't specifically address "copies" of conveyance documents, this endorsement is a requirement for recording. The county recorder is to record a "copy" if it meets the other recording requirements.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 28

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

Question #26: Is it a problem for an employee of the Auditor's office to help maintain the cashbook in the Treasurer's office? Add sheets, fix formulas, look for errors, etc?

Answer #26: Yes, this is an internal control weakness.

Question #27: Can salaries be paid out of the County Auditor's Ineligible Deductions Fund?

Answer #27: Yes, for the county auditor's office or for discovering these properties, if appropriation is provided for that purpose by the county council.

Question #28: Is it ok for the treasurer to remove penalties just because someone did not get a tax bill? Example: they say address was not correct. This includes Personal Property that for some reason they seem to receive the bill 2 or 3 years later.

Answer #28: No. IC 6-1.1-37-10 would still require the treasurer to add the penalty.

Question #29: Do you recommend using the Quietus process for collections of ineligible homesteads? (within the 30 days prior to posting on tax rolls)

Answer #29: Yes, because it is required for all receipts that are not property taxes.

Question #30: After attending a local Chamber dinner, can the council turn the \$350 table fee into the Auditor for payment out of their dues and meetings?

Answer #30: There is limited information provided here so we can tell you what we would look for on the claim in addition to the statutory requirements for all claims. We will expect to see the claim documentation state the county purpose for these officials to attend this meeting. What good or service that is not a donation or political was received by the county? Was it for members of the chamber only? Is the county a member? Was it training? Was it for economic development?

Question #31: Can liens for demolition of property by the city be added to the tax duplicate the same way sewer liens or weed liens are added?

Answer #31: I assume the demolition is under the "unsafe building" law, IC 36-7-9. It is not the same as sewer liens. IC 36-7-9-13.5 allows certification of: 1. Name of each known or recorded owner. 2. Description of unsafe premises. 3. Amount of delinquent payment to you for placement on the duplicate as a special assessment. There are no service charges or certification fees added or collected. All collections for this certified amount are paid to the unit's unsafe building fund.

Question #32: Do we need an ordinance by Commissioners and Council in order to distribute funds to our county taxing units electronically?

Answer #32: The uniform electronic transactions act, IC 26-2-8, would allow you to perform all of the county actions electronically by policy. However, it would require mutual agreement of the governments for the other government's account under IC 26-2-8-104.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 29

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

Question #33: Does a remonstrance or petition from a school, go to the Auditor's office to be certified. We thought it now goes to the clerk's office. Is this correct?

Answer #33: This is really a broad question as there are many certifications involved. When the time comes you will need to work closely with your voter registration office and county attorney. I'll give a brief overview with bullet points but there are really two processes for a controlled project depending on type and dollar amount. One is a petition that leads to the petition to initiate a petition and remonstrance process or petition for a public question. The initial process for both is very similar. 1) If someone comes to your office wanting to proceed with either process...send them to your voter registration office. That is where they get the petition forms. 2) These forms will come back to the voter registration office who will verify the registered voters. The petition will be forwarded to the county auditor's office where the county auditor gives a statement that verifies ownership of property to the voter registration office. The voter registration office then files a certificate with the political subdivisions wanting the project and if the petition has sufficient petitioners, there will be either a petition and remonstrance or public question. The petition and remonstrance is actually very similar to the petition process where the auditor's role is to verify property ownership and the voter registration certifies to the political subdivision the results. If it is a public question the auditor certifies the finally approved public question to the county election board. See IC 6-1.1-20.

Question #34: Regarding SEA 464 – under new legislation, is there a time limit in which funds should be deposited or turned into the Auditor's office. For example, can a department hold money and bring it weekly or monthly?

Answer #34: SEA 464 was the bill that defined public servant and the penalties when they knowingly or intentionally: fail to deposit public funds; or deposits or draws any check except in the manner described in IC 5-13, Investment of Public Funds. IC 5-13-6-1 (c) states in part: "...all local officers who collect public funds shall deposit not later than the business day following the receipt of funds into a depository selected by the local board of finance." This does not mean that a department such as the Clerk's office that has its own depository account must discontinue daily deposit into that depository. Additionally, in order to comply with the uniform compliance guidelines on timely posting of transactions and financial reporting, the departments must remit collections routinely and timely. We recommend that collections be remitted by the 10th day of the month following collection by the department or office.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 30

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

Question #35: Every year our official tax sale list is created on June 30th. Once the tax sale list is created it has been my understanding that we cannot add to the minimum bid amount that is due at that time. However, after June 30th but prior to the tax sale, we invariably have many “Other Assessment” liens such as weed cuttings or sewer liens certified against properties that are eligible for the tax sale. Should I apply them to the tax sale property anyway even though we have already mailed certified letters to property owners and advertised these properties in the newspaper with a specific minimum bid amount listed or should I wait and apply them towards the next year’s Spring installment?

Tax Sale statute IC 6-1.1-24-2 (3)(B) which is part of the list outlining what is to be included in the minimum bid reads “the taxes and special assessments on each tract or item of real property that are due and payable in the year of the sale, whether or not they are delinquent.” My concern is that these liens should be added to the tax bill when they are certified to the Auditor’s Office for collection which would make them “due and payable in the year of the sale” but it seems that the tax sale keeps us from doing so. I’m worried that the case could be made since we didn’t apply the lien towards the tax bill when it was certified that we don’t reserve the right to add it to a future bill.

Answer #35: There is no authority for the county auditor to wait until the following spring installment to add sewer liens and other liens enforced under IC 36-9-23-33. Subsection (g) states in part: “...the county auditor shall immediately enter on the tax duplicate for the municipality delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next installment of property taxes.” This is not addressed in the tax sale statutes for those cases where notice has been sent and advertised but the sale has not occurred. I recommend you work with the county attorney or Judge ordering the tax sale.

Question #36: Our deputy coroners are paid per call that they make. Should they be paid through claims or through payroll?

Answer #36: Employee compensation should be paid through payroll for proper reporting, benefits, and compliance with labor laws.

Question #37: Our board member (health, plat, plan, merit) - should they be paid through claims or through payroll?

Answer #37: Review IRS publications on board member compensation at www.irs.gov or contact the IRS, Federal, State, and Local Government Specialist for Indiana, Raelane Hoff at Raelane.Hoff@irs.gov

Question #38: How should election workers be paid, through claims or through payroll?

Answer #38: Review IRS publications on paying election workers at www.irs.gov or contact the IRS, Federal, State, and Local Government Specialist for Indiana, Raelane Hoff at Raelane.Hoff@irs.gov

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 31

October 2011

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE – (Continued)

Question #39: Our county attorney is paid a retainer fee, and we pay him through payroll bi-weekly. Should this be paid through payroll or claims?

Answer #39: Review IRS publication 15 at www.irs.gov or contact the IRS, Federal, State, and Local Government Specialist for Indiana, Raelane Hoff at Raelane.Hoff@irs.gov

Question #40: A County Board Member receives free services from the County Park as his compensation for serving on the Board. These services include the following: an entrance pass, seasonal camping, boat mooring, boat pass, golf cart pass, free golf, etc. A) Is the County Park Board obligated to track that the board member receives the value of these free services in its books? B) If the free services received by the board member exceed \$600.00 annually, is the County Park Board obligated to report same to the County Auditor for possible tax purposes?

Answer #40: A) The County is responsible to track fringe benefits, value them, and report them according to IRS regulations and to provide accountability to the public. B) We recommend you contact the IRS directly.

Question #41: There is a Gold Card member, an individual, who does not serve on the board, and receives free services from the County Park. A) Is the county park board obligated to track that the Gold Card Member receives the value of these free services in its books? B). If the value of the free services received by the Gold Card Member exceeds \$600.00 annually, is the County Park Board obligated to report same to the County Auditor for possible tax purposes?

Answer #41: These free services need to be tracked for accountability to the public. If this is compensation, a benefit, or post employment benefit for an employee then you need to contact the IRS on the reporting and tracking requirements. If not there still may be potential 1099 reporting requirements depending on the county's relationship with the Gold Card Member. Once again the county should seek guidance from the IRS.

Question #42: A county park employee, as part of his job, receives free services from the County Park as part of his job. A). Is the County Park Board obligated to track that the employee receives the value of these free services in its books? B) If the value of the free services received by the employee exceeds \$600.00 annually, is the County Park Board obligated to report this to the County Auditor for possible tax purposes?

Answer #42: A) The County is responsible to track fringe benefits, value them, and report them according to IRS regulations and to provide accountability to the public. B) We recommend you contact the IRS directly.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 32

October 2011

QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE

Question #1: Does SBOA currently, or are they in the planning stages of, conducting county audits remotely (as in via internet?) Is there currently, or do you anticipate, charging a fee to the county for a field auditor to physically be present in the county?

Answer #1: There are certain areas that can be tested remotely depending on access and whether or not it makes sense. But it is limited. ISETS is a good example. It is a state system that we can test overall for some system controls, but still many of the individual county specific controls need to be tested on-site. That is why some of you will have findings and others not. However, there will probably never be a time when the whole audit is done remotely. One of the most important parts of assessing risk and determining whether or not internal controls are actually being used as presented to us is through observation. We must look at your environment and may watch step by step as you perform certain tasks.

Question #2: Will the SBOA be updating the clerk's manual soon? Did new clerks receive a newer version?

Answer #2: The manuals are a priority of ours especially considering HEA 1025. We are waiting for some direction as to its implementation. There is only one version currently in use for all clerks newly elected or experienced.

Question #3: Marriage Applications – When listing dependent children do you list those children they do not have custody of?

Answer #3: We suggest that you contact the Indiana State Department of Health. The contact person for vital records is Corey Ealy – cealy@isdh.in.gov

Question #4: Can a chief deputy sign a marriage application (we go to a prison to do marriage app)?

Answer #4: A deputy may perform duties of the office as authorized by the Clerk.

Question #5: If one is in jail what address do you list for where they are going to live after married, jail address or home address?

Answer #5: We suggest that you contact the Indiana State Department of Health. The contact person for vital records is Corey Ealy – cealy@isdh.in.gov

Question #6: If a couple is married out of the country, for example Jamaica, is there anything they need to do in the U.S. to legalize marriage.

Answer #6: This is a legal question and entails such questions as whether the marriage is recognized as legal in the country they were married in, do they have the proper documentation to show its validity, what are the requirements of the entity in the U.S. to whom they are proving their marriage is valid. (documents in English?) They might contact the Attorney General but they should probably contact an attorney specializing in family law.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 33

October 2011

QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE – (Continued)

Question #9: Can you explain the updates Nepotism Law?

Answer #9: There is not a statute governing nepotism for counties. There were bills presented this past session that went in depth about nepotism but they were not passed into law.

Question #10: What is the "IC" that allows the state to intercept taxes for the payment of outstanding tickets and is the county's share then sent to that county?

Answer #10: IC 5-11-5-7 allows SBOA or a person designated in writing to collect unpaid costs, fines, or fees for criminal or infraction violations, owed to the state or its political subdivisions. We may also collect or designate a person to collect unpaid user fees under a pretrial diversion agreement by a person charged with a misdemeanor, infraction, or ordinance violation. IC 6-8.1-9.5-2 provides that, if a debtor owes a claimant agency a certified delinquent debt that agency is entitled to have the IDOR set off the tax refund against the delinquent debt. The county share is sent to the county. You can certainly request the details of this process from JTAC.

Question #11: Who determines the priority on payment of fines and fees? When we take partial payments what is to be paid first out of the following: court costs, probation admin, alcohol and drug counter and restitution?

Answer #11: IC 33-37-4-1(e) Unless otherwise directed by the court, if a clerk collects only part of a criminal costs fee from a defendant, the clerk shall distribute the partial payment as follows. 1. General court costs. 2. County user fees. 3. State user fees. 4. Other user fees applicable to the case. 5. Fines. No statutory guidance for other case types. You would need to follow your county or court policy on a consistent basis.

Question #12 On collection cases, we get one check for multiple cases from our attorney. Can we write one receipt and attach copy of case listing or do we have to write a receipt for each case?

Answer #12 One receipt for the one check is appropriate to post to the many cases.

Question #13: Could I hire a file clerk (part-time or full-time) and pay their salary out of the clerk's record perpetuation fund?

Answer #13: Yes, if appropriated and full-time employee position is in the adopted salary ordinance.

Question #14: Give us some examples of what we can use the clerk's record perpetuation fund for?

Answer #14: Preserving Records – Imaging, microfilming, proper storage.
Improving Record Keeping Systems and Equipment – new financial system, upgrades, new filing systems, maintenance agreements, case management system, the system maintenance. (No desk, carpet, curtains, etc...unless you can show through documentation the purchase is in compliance with the statute over this fund)

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 34

October 2011

QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE – (Continued)

Question #15: Does JTAC have the ability to image? And if not what company or companies (vendor) will be compatible to do so?

Answer #15: We recently found out that Tyler Technologies will image. However, JTAC has states they will gladly work with any vendors you want to use for imaging. Just contact anyone @ JTAC or ask your vendor to contact them directly.

Question #16: When support is terminated or there is money being held then released back to Absent Parent, can we keep past due dockets fees owed out of the money to be returned?

Answer #16: If docket fees are for annual support fees that have been paid, yes you may apply the money to the fees owed. If it is not support fees, we don't find any guidance that would allow you to retain the monies. We recommend you work with the Department of Child Services, Child Support Bureau on all matter regarding child support enforcement and cases. You also may need a legal opinion from county attorney or judge.

Question #17: Change of Venue's – Whose responsibility, is it to get the court reports and or the court fees to the accepting county? Is there a time frame? Does this collection of fees need to go to the Auditor's office in the transferring county?

Answer #17: IC 33-37-4-8(b) states "In an action in which there has been or will be a change of venue or transfer from 1 county to another, the clerk of the court from which the action is transferred shall collect from the party seeking change of venue a fee equal to the civil, small claims, or probate costs and fees as are applicable. The clerk of the transferring court shall forward the fee collected under this section to the clerk of the court to which the action is transferred." As for the timing, the receiving court cannot docket the case until they receive the fees and costs. Also see Chapter 6 – Clerks Manual.

Question #18: In the Odyssey system, we automatically cut checks for over payment of traffic fines. (The system makes us!) What do we do with the checks that come back as not deliverable? No way to put back in Odyssey system. What do we do with them?

Answer #18: You may bring these funds into trust to hold until they can be distributed or turned over to unclaimed property. You may also bring them back as unidentified fees, if you choose. You have no authority to keep overpayments received.

Question #19: Notice of meeting of commission on public records can we post on court house doors 48hrs in advance instead of publishing in the local newspaper.

Answer #19: IC 5-14-1.5-5 requires posting notice at the principal office of the public agency or, if no such office exists, at the building where the meeting is to be held; and delivery of notice to the news media which deliver by January 1 an annual request for such notices. Delivery and posting must be at least 48 hours prior to the meeting. This is sufficient because IC 5-15-6 on local public records commissions does not specify publication or compliance with IC 5-3-1.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 35

October 2011

QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE – (Continued)

Question #20: Can the public test notice be done in the same way?

Answer #20: IC 3-11-14.5-2 requires notice under IC 5-3-1-4 at least 48 hours before the test. IC 5-3-1-4 requires publication in 2 newspapers of you have 2 or more that qualify to receive legal notices.

Question #21: We have a school referendum question on fall ballot. Does the county absorb the cost for this or do we bill the city or school corporation involved?

Answer #21: The county absorbs the costs, unless you have to hold a special election.

Question #22: Can part-time help be paid out of Clerk's perpetuation fund for scanning old records and if so can it be paid directly out of that account? Or do we have to request money to be transferred to part-time.

Answer #22: If you have a proper appropriation in the clerks record perpetuation fund, this is allowable as a disbursement directly from the fund. Monies should not be transferred permanently out of the clerks record perpetuation fund to any other fund.

Question #23: What other items can be paid out of the Clerk's Perpetuation fund?

Answer #23: Per IC 33-37-5-2, the fund may be used for: 1) preservation of records; 2) improvement of recordkeeping systems and equipment; or 3) a case management system.

Question #24: Is there a standard for a "small amount" return? For example, \$0.50 overpayment on a traffic ticket, do we mail check? What if it's returned, do we send it again? What about a \$2 refund of bond?

Answer #24: We are not aware of any statutory authority to retain an overpayment. If the amount is refunded by check that is subsequently returned as undeliverable you should bring the amount back into trust. You will then hold the amount until you can locate the person entitled to the refund or it becomes unclaimed property (5 year holding period). At the expiration of the holding period, it should be reported and sent to the Attorney General.

Question #25: What happened to the Clerk's keeping overpayments of up to \$5.00, can our county commissioner establish an ordinance or can our judge adopt a local court rule or does it have to go back to legislation?

Answer #25: It would take a legislative change to authorize the county to retain collections in excess of the statutory fees and costs.

Question #26: How are the required training hours being tracked for all the new clerk's?

Answer #26: Currently, Clerk Beth Mulry receives certifications from SBOA or other entity presenting training. (It is being tracked by the Clerks Association Education Committee appointee)

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 36

October 2011

QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE

Question #1: What is the status of proposed SBOA Rule 20IAC4 - County Official Revoked from Office?

Answer #1: State Board of Accounts has held the public hearing. The Board is considering and working through the comments received. The rule is to clarify the operation of the following Indiana Codes.

IC 5-11-1-10 A public officer who: 1. Fails to make, verify, and file with the state examiner any report required by this chapter; 2. Fails to follow the directions of the state examiner in keeping the accounts of the officer's office; 3. Refuses the state examiner, deputy examiner, field examiner or private examiner access to the books, accounts, papers documents, cash drawer or cash of the officer's office; or 4. Interferes with an examiner in the discharge of the examiner's official duties commits a Class B infraction and forfeits office.

IC 5-11-1-21 All public officers shall adopt and use the books, forms, records, and systems of accounting and reporting adopted by the state board of accounts, when directed to do so by the board, and all forms, books, and records shall be purchased by those officers in the manner provided by law. An officer who refuses to provide such books, forms, or records, fails to use them, or fails to keep the accounts of his office as directed by the board commits a Class C infraction and forfeits his office.

Question #2: Can we give out information to the Visitor and Convention Bureau about Innkeepers?

Answer #2: In 2009 an informal advisory #09-ENF-73 from the Public Assess Counselor concurred with a prior county bulletin where we stated that County Treasurers should not release anything regarding Innkeepers tax that can be identifiable to a certain taxpayer. For example, you can say the county collected \$500,000 in the year but not identify each individual tax payer and what each paid. If you only have one taxpayer you should not give the total as this would be giving out their tax information. You can find this in our January 2010 bulletin. If you have questions you should contact the Public Access Counselor, Joseph Hoage at (317) 234-0906 or 1-800-228-6013.

Question #3: Should you turn personal property over to collections when you know the business no longer exists and it was taxed in a business name, not an individual?

Answer #3: It is the county's decision on what delinquencies are sent for collection. We do recommend you certify the delinquency for judgment. Because only after a judgment is entered may personal property taxes be set aside by court order. One of the reasons a court may set aside a tax judgment is when a corporation against who, the judgment was entered has been formally dissolved or is no longer in business per IC 6-1.1-23-12.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 37

October 2011

QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE – (Continued)

Question #4: If a Mobile Home Park owns a Mobile Home but it is vacant do they have to pay taxes on it?

Answer #4: Per IC 6-1.1-7-15 for a mobile home that: 1) has deteriorated to a degree that can no longer provide suitable protection from the elements as a primary residence; 2) has little or no value as a structure to be rehabbed as a primary residence; 3) where personal property tax liability exceeds the estimated resale value; and 4) has been abandoned in a mobile home community. The title holder may submit a written request to the county assessor to waive the personal property tax liability. If the assessor agrees they will send a letter to the title holder, auditor and treasurer waiving the taxes. Upon receipt of the waiver, the title holder submits a statement to the assessor that the home will be destroyed or dismantled and not used as a dwelling. The title holder then complies with the statement. The county auditor removes from the tax duplicate the taxes for which the waiver was granted.

Question #5: Why would a golf course (club) be able to get an education exemption because the high school teams (boys and girls) use the course as their home course?

Answer #5: In order to qualify for an educational exemption, the property must be owned, occupied and used by a person for educational purposes. If the predominant purpose of the property is not educational, the property would not be eligible for a property tax exemption. Generally speaking, the taxpayer would have to show how or why they are providing educational opportunities as their predominant purpose.

Question #6: Can the Auditor require taxes be paid in full before a parcel is transferred, either current or for the year? For example, real estate taxes for parcel –XYZ123- 2010 pay 11. Installments are \$100.00 each (\$200 annually). They have 2009 pay 10 fall delinquent in the amount of \$75.00. Donald Duck purchases from Mickey Mouse on June 1, 2011. Can my auditor require that \$275.00 be paid by someone before transferring?

Answer #6: We are not aware of any statute allowing the county auditor to deny transfer until the delinquencies are paid unless IC 6-1.1-5-5.5(d) applies. It states in part “before the county auditor may enter or transfer real property created by partition or combination or apportion the assessed value of the real property among the owners the owner must pay or otherwise satisfy all property taxes for which the due date has passed as of the date of transfer” (Our emphasis added). If IC 6-1.1-5-5.5(d) is applicable, the county auditor must not transfer the property in the example, until \$175-has been collected for this parcel.

Question #7: Does treasurer take off “bankruptcy” on tax info when office receives “discharge of debtor”?

Answer #7: The Treasurer would then request the county auditor remove the delinquencies discharged by the bankruptcy court using a C of E.

Question #8: Can the interest of “old” active judgments be removed by or “forgiven by” the County Commissioners?

Answer #8: We don’t see a provision for this in statute. Judgments are an action of the court and can only be set-aside or satisfied by entry of the court. IC 24-4.6-1-101 and 102 sets the interest on money judgments @ 8% from date of court verdict to satisfaction.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 38

October 2011

QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE – (Continued)

- Question #9:** Penalties on Sewer Liens – Are penalties on sewer liens to go to the sewer district?
- Answer #9:** Penalties on sewer liens like all other taxes and special assessment penalties for late payment are to be apportioned to the taxing units based on tax rates.
- Question #10:** Should tax payment coupons say “Approved by State Board of Accounts” on them with the year approved?
- Answer #10:** No. IC 6-1.1-22-8.1 requires you to use the tax statement prescribed by DLGF and approved by us. They have determined that the coupons are not part of the tax statement. They are for the county’s administrative processing only.
- Question #11:** Is there any way to get the Mobile Home Parks to list the lot numbers when they turn on their list to assessor’s office?
- Answer #11:** Your Assessor can request the lot number. However, there is no statutory basis to use for enforcement.
- Question #12:** The salary ordinance is published and at the end of year the total salary is published, but is the number of overtime hours in a pay period public record?
- Answer #12:** Compensation including overtime paid to public employees would be available to the public via a public records request.
- Question #13:** Are the e-mail addresses in our systems for e-billing public record?
- Answer #13:** IC 5-14-3-2 makes this record a public record. However, there are public records that are confidential and cannot be disclosed. IC 5-14-3-4 contains the guidance on which records are exceptions to the requirement to disclose public records upon request. We don’t see anything that keeps these confidential. You should also feel free to discuss public access questions with the Public Access Counselor for specific guidance.
- Question #14:** Should a 1st Deputy be bonded?
- Answer #14:** IC 5-4-1-18 makes this a decision of the county council to provide coverage under a blanket bond or crime insurance policy. We recommend bond coverage for those officials, deputies, and employees that handle monies.

**THE COUNTY BULLETIN
and Uniform Compliance Guidelines**

Vol.No.380, Page 38

October 2011

QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE – (Continued)

Question #15: If there is a Sheriff Sale – for example on 6-20-11, do the taxes due by November 10, 2011 have to be paid before it (the property) can be sold?

Answer #15: IC 32-29-7-8.5 on requirements for payment of property taxes and related costs before sheriff's sale require the payment of all delinquent property taxes, special assessments, penalties and interest that are due and owing at the date of the sheriff sale. Therefore, in the example above, the answer would be no. There are additional provisions if the property has already gone through a tax sale. If a certificate of sale issued under IC 6-1.1-24 is outstanding the amount necessary for redemption of the property under IC 6-1.1-25 and all delinquent property taxes, special assessments, penalties and interest that are not covered by the redemption and are due and owing on the property on the date of sale must be paid.

Question #16: A usual, Nov 10th tax deadline, which is on Saturday next year (2012). If we are open on Monday, Nov 12th but there is no mail delivery (because of Nov 11th Veteran's Day) is the actual due date Monday Nov 12th or Tuesday Nov 13th?

Answer #16: IC 6-1.1-37-10(e) states: "If any due date falls on a Saturday, Sunday, a national legal holiday recognized by the federal government, or a statewide holiday, the act that must be performed by that date is timely if performed by the next succeeding day that is not a Saturday, Sunday or one of those holidays." IC 1-1-9-1 that establishes the legal holidays in Indiana, includes November 11th Veteran's Day. Therefore, the tax due date is Tuesday, November 13th.

Question #17: A lady came in our office and writes a check for both halves of her Property tax on June 10th (Spring late-Fall early) her check bounces, we work with her and ask her to bring in the amount and a NSF fee in certified funds. She balks and drags her feet and finally comes in, in late July with a certified check for spring and the NSF fee which is less than the original bad check she wrote in June. How do you deal with the difference? Do you let her slide and take the payment or ask her for the difference to make up the original check? Our previous treasurer sent a man to the prosecutor who wrote a check and then purposely NSF-ed it when he realized the parcels he had paid on were not his.

Answer #17: We recommend you try to collect the remaining portion (Fall Installment) of the bad check. When you determine that this is not going to be collected, you recharge the taxes and submit a claim against unappropriated county general fund for the uncollectible amount. Please keep in mind, IC 36-1-8-13 requires you to report dishonored checks to the prosecuting attorney within 90 days of the initial receipt of the check.

Question #18: Why are businesses not assessed and taxed in the same year the way mobile homes are? This would help with consistency between personal property and real property and would also aid in collections since new businesses come and go so quickly.

Answer #18: The answer is because the Indiana Code provides for taxation of businesses in this manner. If you think changes would improve the process in Indiana, work with your association on proposing legislation that would make the process better.